

**United States Department of Labor
Employees' Compensation Appeals Board**

M.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Harrisburg, PA, Employer**

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**Docket No. 15-381
Issued: April 3, 2015**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 10, 2014 appellant, through his attorney, filed a timely appeal from a November 13, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a back injury causally related to factors of his federal employment.

FACTUAL HISTORY

On December 6, 2012 appellant, then a 58-year-old clerk,² filed a claim alleging that he sustained a back injury from operating a delivery bar code sorter (DBCS) machine. On

¹ 5 U.S.C. § 8101 *et seq.*

² The record indicated that appellant also worked part time as a chiropractor.

November 4, 2012 he was sweeping mail from the lower tier of a DCBS machine when he felt a twinge in his back. Appellant felt the same twinges in the ensuing weeks, and his condition progressively worsened. On November 24, 2012 he was having trouble with his back prior to his shift, and sweeping mail from the lower tier again felt a twinge.

The record indicates that appellant was treated in a hospital emergency room on December 22, 2012 with complaints of left hip and back pain. In a report dated December 23, 2012, Dr. Carlo Deagustine, an osteopath, provided results on examination and diagnosed low back pain. He reviewed the x-rays which showed spondylosis and S1 degenerative changes. In a x-ray report dated December 23, 2012, Dr. Anand Jagannath, a Board-certified radiologist, diagnosed lower thoracic and lower lumbar spondylosis, and mild S1 joint degenerative changes.

In a report dated December 28, 2012, Dr. Robert Blake, a chiropractor, stated that appellant was treated for a low back injury on November 24, 2012. He noted x-rays had been taken at the hospital and showed degenerative joint disease, spondylosis, posterior L4 vertebra body on L5 with broken Georges line, and thin posterior L5 disc space. Dr. Blake's diagnoses included 739.3, which is a subluxation according to the International Classification of Diseases, ninth edition (ICD-9).

By decision dated March 5, 2013, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

In a report dated June 25, 2013, Dr. Norman Haueisen, an osteopath, stated that appellant was a chiropractor whose pain began as a result of repetitive activities at work. He reported that a magnetic resonance imaging (MRI) scan showed an annular tear at L5-S1 and appellant would proceed with an epidural injection.

Appellant requested a hearing before an OWCP hearing representative, which was held on August 7, 2013. After the hearing, he submitted an August 20, 2013 report from Dr. Robert Macht, a Board-certified surgeon, who provided a history that appellant had worked seven years doing repetitive pushing, pulling, carrying, lifting, and twisting. Dr. Macht stated that appellant's pain began on November 4, 2012, and appellant had increased pain while working on November 23, 2012. He provided results on examination and diagnosed lumbalgia. Dr. Macht noted that a chiropractor had diagnosed a subluxation. He reported that the x-rays revealed mild arthritic changes, but that this was not casually related to his pain problems at this time. Dr. Macht reported that appellant had to lift trays more than 30 pounds, and there would be an incorrect posture while lifting as this was required in his job. He concluded that "based on medical probability, there is a causal relation with his current problems with his back and the work activities" at the employing establishment.

In a report dated September 3, 2013, Dr. Macht stated that he had reviewed a June 6, 2013 electromyogram (EMG) and had reviewed an MRI scan.³ He stated that the evidence showed mild disc bulging at L3-4 and L4-5, disc disease with annular tear at L5-S1. Dr. Macht stated that the corrected diagnoses would be lumbalgia and degenerative disc disease. He again

³ The record contains a May 29, 2013 MRI scan report diagnosing mild multilevel degenerative changes and moderate left foraminal stenosis at L5-S1.

stated that based on medical probability, there was a causal relation with appellant's current problems and work activity.

By decision dated November 27, 2013, the hearing representative affirmed the March 5, 2013 OWCP decision. He found the medical evidence was insufficient to establish the claim.

Appellant requested reconsideration and submitted a January 24, 2014 report from Dr. Macht, who again diagnosed degenerative disc disease and lumbalgia. Dr. Macht stated that the two diagnoses were connected, although degenerative disc disease can exist "without symptoms (lumbalgia). He stated that appellant developed lumbalgia and the underlying degenerative disc disease due to activities at work.

In a decision dated August 6, 2014, OWCP reviewed the case on its merits. It denied modification, finding that the medical evidence was insufficient to establish the claim.

Appellant again requested reconsideration and submitted a March 17, 2014 report from Dr. Blake, who provided a history and results on examination. Dr. Blake stated that appellant had been x-rayed on "12-2-201" (sic) and diagnosed lumbar disc dissection, subluxation L5, lumbar myalgia, lumbar disc degeneration, left S1 subluxation, and S1 sprain/strain. In a report dated September 11, 2014, he again diagnosed lumbar subluxations.

OWCP referred the case to Dr. Leonard Kaufman, a Board-certified radiologist, for an opinion as to whether the December 23, 2012 x-rays showed a subluxation. In a report dated October 21, 2014, Dr. Kaufman indicated that he reviewed the December 23, 2012 x-rays, MRI scan, December 22, 2012 emergency room report, and reports from Dr. Blake. He opined that there was no radiographic evidence of a subluxation.

By decision dated November 13, 2014, OWCP reviewed the case on its merits. It found that Dr. Blake was not a physician under FECA and the evidence was insufficient to warrant modification.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁴ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.115(e) (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁷ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁸ Additionally, in order to be considered rationalized; the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁹

ANALYSIS

In the present case, appellant has alleged that he sustained a back injury casually related to repetitive action in his federal employment as a clerk, including operating a DBCS machine. OWCP has accepted that his job included the identified employment factors. The issue is whether there is sufficient probative medical evidence establishing causal relationship between a diagnosed condition and the employment factors.

With respect to the evidence from Dr. Blake, the chiropractor, the Board finds that he is not established as a physician under FECA. The Board notes that this is not a situation where Dr. Blake interpreted his own x-rays and there was a disagreement with a radiologist as to whether a subluxation was demonstrated.¹⁰ In this case, the x-rays were taken on December 23, 2012 at a hospital, and the Board-certified radiologist, Dr. Jagannath, did not report a subluxation. OWCP referred the x-rays for a second opinion evaluation by a Board-certified radiologist, Dr. Kaufman, who also confirmed that no subluxation was evidenced. Dr. Macht also stated in his August 20, 2013 report that the x-rays showed only mild arthritic changes. The Board finds that the weight of the evidence does not establish a subluxation as demonstrated by x-ray.¹¹ Since Dr. Blake is not physician under FECA, his reports are of no probative value.¹²

⁶ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ *See Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ *See George E. Reilly*, 44 ECAB 458 (1999). 20 C.F.R. § 10.311(c) provides that a chiropractor may interpret his or her x-rays to the same extent as any other physician.

¹¹ *See Susan M. Herman*, 35 ECAB 669 (1984) (opinion of orthopedic surgeon and radiologist outweighed opinion of chiropractor as to x-rays taken for an attending physician); *see also Nancy J. Hyre*, Docket No. 90-772 (issued June 22, 1990) (the weight of the evidence was represented by an orthopedic surgeon and radiologist for x-rays taken by the orthopedic surgeon).

¹² *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

Appellant submitted reports from Dr. Macht dated August 20 and September 3, 2013 and January 24, 2014. These reports do not constitute rationalized medical opinion on the issue presented. Dr. Macht diagnosed lumbalgia and degenerative disc disease. As to lumbalgia, he refers to “symptoms” in his January 24, 2014 report, without further explanation. It is not clear whether the diagnosis represents low back pain or other specific findings.¹³ With respect to degenerative disc disease, Dr. Macht does not state whether the condition preexisted any employment injury. He suggested that the work duties caused the degenerative condition. However, to establish causal relationship, Dr. Macht must describe appellant’s work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated the condition.¹⁴ He refers generally to appellant’s job duties over seven years and specifically to lifting overhead, without providing any explanation as to the actual process by which these activities caused the diagnosed conditions.

It is appellant’s burden of proof to establish the claim. In the absence of rationalized medical opinion evidence from a physician as to causal relationship between a diagnosed condition and the employment factors, he has not met his burden in this case. Appellant may submit new evidence or argument with a written application for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds appellant has not established a back injury causally related to factors of his federal employment.

¹³ The ICD-9 code for lumbalgia is 724.2, the same as low back pain, lumbago, and low back syndrome.

¹⁴ See *J.P.*, Docket No. 14-1966 (issued January 23, 2015); *M.D.*, Docket No. 14-1498 (issued January 8, 2015); *C.T.*, Docket No. 11-625 (issued October 17, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 13, 2014 is affirmed.

Issued: April 3, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board